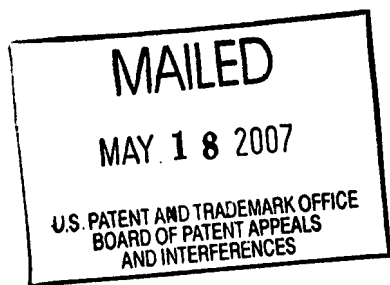


UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte JOSEPH L. GARGIULO

Application No. 09/965,753

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received electronically at the Board of Patent Appeals and Interferences on March 20, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

The Examiner's Answer mailed on January 17, 2006, stated under the Evidence Relied Upon section, page 2 that "No evidence is relied upon by the examiner in the rejection of the claims under appeal." A review of the file reveals that prior art was applied to the Rejections on appeal. See the Grounds of rejection on page 3 of the Examiner's Answer. The Manual of Patent Examining Procedure, (MPEP), in §1207.02 states:

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(8) *Evidence Relied Upon*. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and, in the case of nonpatent references, the relevant page or pages.


Before further review, the examiner must mail a PTOL-90 that will include in the amended Evidence Relied Upon section, the list of references mentioned in the statement of rejections. See the Manual of Patent Examining Procedure, (MPEP) § 1207.02.

Appropriate correction is required.

Accordingly, it is **ORDERED** that the application is returned to the Examiner to:

- 1) issue and mail a PTOL-90 having the missing references listed under the Evidence Relied Upon section, heading (8) of the Examiner's Answer; and
- 2) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: 
PATRICK J. NOLAN
Deputy Chief Appeals Administrator
(571) 272-9797

PJN/gjh

Application No. 09/965,753

PITNEY BOWES, INC.
35 WATERVIEW DRIVE
P.O. BOX 3000, MSC 26-22
SHELTON, CT 06484-8000